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Fifty-third session
Item 16 of the provisional agenda

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-EIGHTH SESSION

Contemporary forms of slavery

Note by the Secretary-General

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GE.97-10675 (E)

Introduction

1. In paragraph 13 of its resolution 1996/61, entitled "Contemporary forms of slavery", the Commission on Human Rights requested the Secretary-General to examine, in cooperation with relevant United Nations agencies, in particular the World Health Organization, as well as the International Criminal Police Organization and all relevant non-governmental organizations, the reliability of allegations regarding the removal of organs and tissues of children and adults for commercial purposes in order to enable the Commission at its fifty-third session to decide upon possible follow-up in this matter.

2. Pursuant to this resolution, on 26 November 1996, letters were addressed to relevant United Nations agencies and non-governmental organizations requesting their contributions.

3. As of 19 February 1997, replies have been received from the United Nations Population Fund, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as from the International Catholic Child Bureau and Human Rights Watch.

4. The present report contains a summary of the substantive replies received.

I. INFORMATION RECEIVED FROM UNITED NATIONS AGENCIES

United Nations Educational, Scientific and Cultural Organization

5. The United Nations Educational, Scientific and Cultural Organization drew attention to its activities with respect to bioethics and the protection of human rights and especially to the work being carried out under the aegis of the International Bioethics Committee (IBC) established in 1993. In that regard, UNESCO submitted to the 93rd Conference of the Interparliamentary Union in 1995 a document on this specific subject. 1/ The second chapter of that document addresses the issue of organ and tissue transplantations.

World Health Organization

6. In its reply, the World Health Organization stated that the issues raised in Commission resolution 1996/61 were receiving careful attention from WHO. The matter has been brought to the attention of the internal WHO Working Group on Organ Transplantation, as well as to that of the members of the WHO Task Force on Organ Transplantation. The Task Force had held its first meeting at the Fondation Mérieux, Annecy, on 10 and 11 October 1996. A copy of the report of that meeting would be provided as soon as it was available for distribution. A preliminary version of the report had been presented at the thirty-fourth session of the WHO Advisory Committee on Health Research (ACHR), held in Geneva from 15 to 18 October 1996. ACHR had welcomed the document and recommended that it be presented to the Director-General for implementation and dissemination to the WHO regional offices. The matter of the reliability of allegations concerning the removal for commercial purposes of organs and tissues was touched upon at the Annecy meeting.

7. WHO also pointed out that one of the members of the Task Force, Professor A.S. Daar (Chairman of the Department of Surgery at the College of Medicine of Sultan Qaboos University in Muscat, Oman), had published widely on some of the issues raised by Commission resolution 1996/61. Professor Daar had drafted a chapter entitled "Paid organ donation - towards understanding the issues", to be included in Organ and Tissue Donation, edited by Chapman, Deirhoi and Wight and scheduled to be published in 1997 by Edward Arnold, London. 1/

8. WHO transmitted to the Secretary-General, for information, a copy of the recently issued "Medical-ethical guidelines for organ transplantations", issued by the Swiss Academy of Medical Sciences and published in the Schweizerische Medizinische Wochenshrift (1996, vol. 126, No. 47, pp. 2032-2035).

II. INFORMATION RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

Human Rights Watch

9. Human Rights Watch submitted a report of Human Rights Watch/Asia, published in August 1994, entitled "Organ procurement and judicial execution in China", together with copies of articles from Reuters and various Indian news sources regarding the purported underground kidney transplant market in India. 1/

10. Human Rights Watch also referred to an unpublished paper entitled "The 'human' in human rights: Universalization versus globalization" that discusses transplant issues from a human rights perspective and explores the concepts of individual autonomy, the rights of a community over its members and freedom of contracts. The author examines the categorization of peoples as human and less-than-human and notes that such valuations have historically been used to justify the use of organs of criminals and the poor. Drawing on examples from India, the author speculates on the implications of allowing a market in organs to develop.

Note

1/ Available for consultation in the Secretariat.

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Fifty-third session
Item 16 of the forty-eighth
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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-EIGHTH SESSION

Report of Mr. Asbjørn Eide, Chairman of the Sub-Commission at its forty-eighth session, prepared in accordance with paragraph 14 of Commission on Human Rights resolution 1996/25

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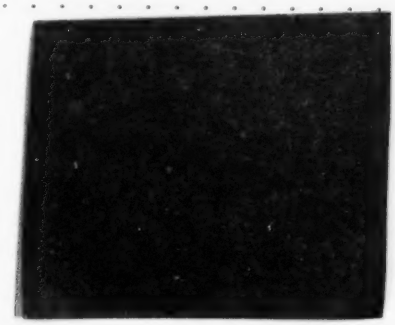

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Introduction

1. In its resolution 1996/25 of 19 April 1996, entitled "Work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities", the Commission expressing its appreciation of the positive contribution made by the Sub-Commission to the promotion and protection of human rights, but stressing the need for enhanced cooperation between the Commission and the Sub-Commission, and recalling the continued importance for the Commission to give guidance to the Sub-Commission and for the Sub-Commission to follow that guidance, in the light of the mandate already granted to it, in order to ensure complementarity and avoid duplication, reaffirmed that one of the tasks of the Sub-Commission was to undertake a thorough examination of information concerning alleged human rights violations, in accordance with its mandate, as well as the presentation of the results of the examination to the Commission.

2. In the same resolution, the Commission requested the Sub-Commission thoroughly to review in an effective manner its mandate and working methods with a view to improving its efficiency further and avoiding duplication with the Commission, and to give particular attention to: further rationalization of its agenda; selection of subjects for studies as well as the commissioning, number, treatment and time-frame for studies and reports; the functioning and mandate of its mechanisms; the need to focus on the implementation of existing human rights standards and mechanisms; the consideration of alleged violations of human rights; and the need for enhanced cooperation with mechanisms of the Commission and, within their competence, with all relevant bodies including the human rights bodies.

3. The Commission requested the Chairman of the Sub-Commission at its forty-eighth session to report to the Commission at its fifty-third session on significant aspects of the work of the Sub-Commission.

4. In pursuance of this request, the Chairman of the Sub-Commission submits the present concise report to the Commission. More details regarding the various aspects of the work of the forty-eighth session of the Sub-Commission will be provided, if necessary, by the Chairman of the Sub-Commission in his statement to the Commission at its fifty-third session. The report of the Sub-Commission on its forty-eighth session is before the Commission in document E/CN.4/1997/2-E/CN.4/Sub.2/1996/41.

I. AGENDA OF THE SUB-COMMISSION AND ITS RATIONALIZATION

5. The agenda of the forty-eighth session of the Sub-Commission contained 22 items, both procedural items relating to its organization of work and substantive items covering the various elements of the mandate set by the Commission and the Economic and Social Council for the Sub-Commission.

6. The basic mandate established by the Commission for the Sub-Commission is (a) to undertake studies, particularly in the light of the Universal Declaration of Human Rights concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities, (b) to perform any other functions which may be entrusted to it by the Economic and Social Council or the Commission on Human Rights. This mandate is set out in the

resolution on the prevention of discrimination and the protection of minorities adopted by the Commission at its fifth session, in 1949 (E/1371-E/CN.4/350, para. 13, sect. A, "Terms of reference of the Sub-Commission").

7. In pursuance of part (b) of the mandate contained in the above-mentioned resolution, the Commission and the Economic and Social Council has entrusted to the Sub-Commission a number of more specific mandates which form the basis of its agenda. Of particular importance in this respect are Commission resolution 8 (XXIII) and Economic and Social Council resolution 1235 (XLII) mandating the Sub-Commission to undertake a thorough examination of information concerning alleged human rights violations and to bring the results to the attention of the Commission, and Council resolution 1503 (XLVIII) in which the role of the Sub-Commission in the handling of communications is laid out.

8. Based on the general and the specific mandates given to the Sub-Commission, the substantive elements on its agenda can be divided into the following components: the question of violations of human rights; thematic issues relating to racial discrimination; the realization of economic, social and cultural rights; implementation of the human rights of women; contemporary forms of slavery; the human rights of indigenous peoples; the protection of minorities; the administration of justice and the human rights of detainees; freedom of movement; communications concerning human rights; and review of developments in fields with which the Sub-Commission has been or may be concerned.

9. In compliance with the request by the Commission to rationalize the agenda, the Sub-Commission decided at the end of its forty-eighth session on a thorough reorganization, resulting in a reduction from 23 agenda items at the forty-eighth session in 1996 to 13 items on the draft agenda for its forty-ninth session, in 1997. The rationalization consists partly in grouping together several interrelated issues under one agenda item, and partly in greater use of the biannual consideration of some sub-items. It is hoped that this rationalization will make it possible for the Sub-Commission to manage its work in the limited time available at each session and facilitate more in-depth study of the items under discussion.

II. REPORT OF THE CHAIRMAN OF THE FIFTY-SECOND SESSION OF THE COMMISSION ON HUMAN RIGHTS

10. In paragraph 13 of its resolution 1996/25, the Commission invited its Chairman to inform the Sub-Commission on the debate under the Commission agenda item entitled "Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its forty-seventh session". Pursuant to that resolution, the Sub-Commission extended an invitation to the Chairman of the fifty-second session of the Commission, Mr. Gilberto Vergne Saboia, who addressed the Sub-Commission at its forty-eighth session.

11. The Chairman of the Commission said that many delegations in the Commission had paid tribute to the important work which was being done by the Sub-Commission for the cause of human rights and had stressed its valuable think-tank function. The many initiatives which had subsequently led to the

drafting of new instruments were considered by delegations as particularly valuable, as was the exploration of especially critical problems encountered in the modern world, including attention to issues in the field of social and economic rights, such as the right to housing, extreme poverty and indigenous rights. Appreciation of its function as a forum for non-governmental organizations had also been expressed by a number of delegations.

12. Mr. Saboia pointed out, on the other hand, that several delegations saw a need for reform and therefore considered it essential that the Sub-Commission review its modus operandi in order to make maximum use of its capacities. It was felt by many that the Sub-Commission should give priority to recommendations based on in-depth studies of particular situations and general human rights problems.

III. ACTION BY THE SUB-COMMISSION ON ITS METHODS OF WORK: GENERAL

13. In response to Commission resolution 1996/25 and the observations made on behalf of the Commission by Mr. Saboia, the Sub-Commission devoted several meetings to its methods of work. Two of these meetings were held in closed sessions, which does not mean that they were confidential.

14. The Sub-Commission conducts its work partly through its study programme, partly by use of its working groups and partly by plenary debates and decisions. Four intersessional working groups met before the forty-eighth session: the working group on communications, the working group on the rights of indigenous populations, the working group on minorities and the working group on contemporary forms of slavery. In addition, a working group on the administration of justice and the human rights of detainees met during the session.

15. In accordance with the request of the Commission, particular attention was given to the methods of work in regard (a) to the question of violations of human rights and (b) in the selection, number and conduct of studies. Another problem discussed was how to make best use of the limited time available during each session.

16. The Sub-Commission has only 40 meetings available, or altogether 120 hours. The time available for discussions among the 26 experts has over the past decade been significantly reduced owing to the time required for interventions by observers. The presence and number of interventions by observers has increased rapidly during this period, while the total time available during each session of the Sub-Commission has remained the same or in fact has been somewhat reduced since it is no longer possible to hold night meetings or have other extra time. By way of illustration, it should be noted that in 1977 there were probably no more than 10 interventions by Government observers, and even fewer by NGOs. In 1980, Government observers intervened on 24 occasions, and NGOs on almost as many. In 1984, Government observers took part in the discussion 64 times, and NGOs 67 times. By 1987, the figures had increased to 72 interventions from Government observers, and 92 from NGOs, and in 1995 Government observers intervened no less than 143 times (including rights of reply) and NGOs made a record number of 226 interventions.

17. Another problem arises from the expanding amount of documentation needed to meet the justified request of the Commission for enhanced cooperation with the mechanisms of the Commission and the relevant treaty bodies, in addition to the reports prepared for it by the Secretary-General, the progress reports under the study programme, and information from NGOs and others relating to allegations of violations. Much of this information is made available at a very late stage, and the intensive use of the session for meetings leaves little time for proper study of the documentation. The Sub-Commission is therefore exploring strategies to reduce the time pressure, partly by reducing the number of agenda items as mentioned above, and partly by examining the possibility of extending the length of the session without incurring additional cost for the United Nations.

18. To that end, it adopted decision 1996/112, in which, expressing its conviction that the time devoted to formal meetings could be reduced if the meetings were rescheduled to take place over a longer period, thereby allowing both for in-depth study of the documentation and informal consultations, it decided to request the Secretary-General to examine the financial and other implications of organizing the Sub-Commission sessions according to other alternatives outlined in the decision. At its forty-ninth session in 1997, the Sub-Commission will be in a position to make recommendations concerning possible changes in the organization of meetings, on the understanding that additional costs must be avoided.

IV. METHODS OF WORK REGARDING THE AGENDA ITEM ON VIOLATIONS OF HUMAN RIGHTS

19. In connection with the issue of violations of human rights and fundamental freedoms, the following three tasks fall within the terms of reference of the Sub-Commission: (a) to carry out duties provided for under Economic and Social Council resolution 1503 (XLVIII), specifically designed to deal in a confidential procedure with the communications referred to in Council resolution 728 F (XXVIII); (b) to prepare for the use of the Commission a report containing information on violations of human rights and fundamental freedoms from all available sources in accordance with paragraph 2 of Commission resolution 8 (XXIII); and (c) to bring to the attention of the Commission any situation which it has reasonable cause to believe reveals a consistent pattern of gross violations of human rights in accordance with paragraph 6 of Commission resolution 8 (XXIII).

20. The Sub-Commission reviewed its methods used in the public discussion and examination, under item 6 of its agenda, of alleged violations of human rights and fundamental freedoms. It was observed that the Sub-Commission has only partly implemented the functions entrusted to it under Commission resolution 8 (XXIII). It has not done what is requested of it in paragraph 2 of that resolution, which is to prepare for the use of the Commission a comprehensive report containing information on violations of human rights from all available sources. At its forty-eighth session, the Sub-Commission renewed its discussion of the practical feasibility of such a report and its value. Opinions were divided, however, and the Sub-Commission therefore did not take any decision on this issue. Guidance from the Commission, which in 1967 entrusted the Sub-Commission with this particular mandate and has not changed it since then, would therefore be desirable.

21. The Sub-Commission has in previous years fulfilled the other part of its mandate, contained in paragraph 6 of Commission resolution 8 (XXIII), which is to bring to the attention of the Commission particular situations which it has reasonable cause to believe reveal a consistent pattern of gross violations of human rights. A thorough discussion was held concerning the practice under this agenda item. Agreeing with the Commission that it is inappropriate to bring to the attention of the Commission situations already under consideration by the Commission, thereby duplicating its work, the Sub-Commission decided at the end of its forty-eighth session (decision 1996/115) to take no action at its forty-ninth session under its agenda item 6 in respect of human rights situations which the Commission was considering under the public procedure for dealing with human rights violations.

V. THE ADMINISTRATION OF JUSTICE AND THE RIGHTS OF DETAINEES

22. The final report on the question of impunity of perpetrators of violations of civil and political rights (E/CN.4/Sub.2/1996/18) was submitted at the forty-eighth session. In view of its importance, the Sub-Commission requested the Special Rapporteur to submit to it at its forty-ninth session a revised version of the set of principles for the protection of human rights through action to combat impunity, annexed to the final report, taking into account comments and observations received.

23. The Sub-Commission also recommended, in its resolution 1996/29, that the Commission endorse and the Economic and Social Council approve the request of the Sub-Commission that two of its members compile and update the important study on the right to a fair trial and a remedy, which was completed in 1994.

VI. ECONOMIC AND SOCIAL RIGHTS

24. Over the past 10 years the Sub-Commission has dealt more fully with issues relating to economic and social rights. At its 1996 session, it examined the final report by Mr. Leandro Despouy on human rights and extreme poverty (E/CN.4/Sub.2/1996/13) and welcomed the recommendations contained therein. In its resolution 1996/23, the Sub-Commission requested the Commission to endorse the conclusions and recommendations on this important subject contained in the report.

25. In its resolution 1996/25, the Sub-Commission appealed to the world's leaders, through the Commission on Human Rights, when they assembled in Rome for the World Food Summit, in November 1996, to reaffirm the fundamental right of every man, woman and child to be free from hunger and to propose ways in which the right to food could be further clarified and implemented. It is a pleasure to note that the World Food Summit took account of that appeal and included in the Plan of Action it adopted the objective of clarifying the content of the right to food and the fundamental right of everyone to be free from hunger and of giving particular attention to implementation and progressive realization of this right as a means of achieving food security for all. The active involvement of the High Commissioner for Human Rights and several of the human rights bodies of the United Nations will be required for this purpose.

26. The Sub-Commission also examined the progress reports of the study on the question of the impunity of perpetrators of violations of economic, social and cultural rights, and of the study on human rights and income distribution. Both of these studies will be completed in 1997.

VII. MINORITIES AND INDIGENOUS PEOPLES

27. The Sub-Commission considered the reports of the Working Group on Minorities on its first and second sessions. Disturbed by the widespread occurrence in many parts of the world of violent conflicts engendering ethnic or religious hostility, and convinced that the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, together with other relevant instruments, is the best approach for resolving such conflicts peacefully, the Sub-Commission in its resolution 1996/17 expressed its deep appreciation to the Working Group and called on the Commission to extend its mandate for another two years.

28. Arising from recommendations made by the Working Group on Indigenous Populations, the Sub-Commission endorsed several draft decisions transmitted to the Commission, including a request for the authorization of a study on indigenous land rights.

29. The final progress report of the study on treaties, agreements and other constructive arrangements between States and indigenous populations was submitted to the Sub-Commission at its forty-eighth session. The Sub-Commission calls on the Commission to request the Special Rapporteur to submit the final report in time for consideration at the forty-ninth session and the Secretary-General to ensure that he is given the necessary assistance.

VIII. REPORTS AND STUDIES

30. In paragraph 9 of its resolution 1996/25, the Commission reitereated its request to the Sub-Commission thoroughly to review its working methods with regard to the selection of subjects for studies, as well as the commissioning, number, treatment and time-frame of studies and reports.

31. Guidelines on these matters were adopted in 1992 and annexed to Sub-Commission resolution 1992/8. At its forty-eighth session, in 1996, the Sub-Commission agreed that further reflection was required both with regard to the number of studies and reports and to the process of selection and treatment.

32. In this regard, the attention of the Commission is drawn to annex V to the report of the Sub-Commission on its forty-eighth session (E/CN.4/1997/2-E/CN.4/Sub.2/1996/41). Part A of that annex contains the list of studies and reports completed at the 1996 session. Part B contains a list of ongoing studies and reports entrusted to special rapporteurs in accordance with existing legislative authority. Part C refers to annual reports entrusted to special rapporteurs in accordance with existing legislative authority. It contains only one item. Part D contains a list of working papers and other documents without financial implications. (These should be

seen as the normal input by expert members in the preparations for the sessions.) Lastly, part E contains a list of new studies recommended to the Commission for approval.

33. It will be noted that two studies were completed. Additionally, one analytical final report (on traditional practices affecting the health of women and children) was completed. In view, however, of the lack of information from Governments on the plan of action adopted in this field, the Sub-Commission calls on the Commission to extend the mandate in order to monitor, over two years, these issues, in particular the implementation of the plan of action. It should be noted that this would not involve a new study, but a brief period of monitoring the implementation of that plan of action.

34. At present, all other ongoing studies (five in number) are nearing completion, and the final reports of all studies contained in part B of annex V will be completed at the forty-ninth session in 1997.

35. The Sub-Commission is fully aware of the need for a more thorough planning of the study programme and the need to set priorities. For this reason, and taking into account the request of the Commission, as well as the need for the Sub-Commission to bring to a successful conclusion the studies already initiated, it decided (decision 1996/113) not to propose any new study or reports with the exception of those cases in which studies or reports were specifically recommended by a competent working group of the Sub-Commission.

36. Consequently, at its forty-eighth session, the Sub-Commission recommended the initiation of only one new study, proposed by the Working Group on Indigenous Populations, on indigenous land rights.

37. The fact that no other new studies are proposed and that the final reports of all remaining studies will be submitted at the 1997 session means that the Sub-Commission will be in a position to discuss more freely its study programme and to recommend to the Commission a set of priorities in this regard.

38. For this and other purposes the Sub-Commission authorized the preparation, without financial implications, of several working papers for submission at its forty-ninth session. These should be seen as normal preparatory documents which can be prepared by the expert members and which are necessary for the Sub-Commission to carry out its work. It should be noted that the preparation of a working paper does not necessarily lead to a proposal by the Sub-Commission for the preparation of a study on that subject. Nor does it mean that the Sub-Commission is excluded from giving priority to other subjects.

IX. CONSIDERATION OF NEW DEVELOPMENTS IN THE FIELD OF HUMAN RIGHTS

39. The working papers to be prepared, without financial implications, are intended to facilitate the discussion by the Sub-Commission of certain new developments which may or may not require further in-depth study.

40. As examples (the full list is found in annex IV, part D to the Sub-Commission report) the following could be mentioned. One working paper is

intended to explore ways and means to promote democracy, how democracy can ensure economic, social, cultural and political rights, and how to overcome obstacles to democracy. Another deals with the question of human rights and terrorism. A third deals with the impact of scientific and technological developments on human rights, a fourth deals with new aspects of the issue of freedom of movement, including the right to remain (and therefore the right not to be subjected, for example, to "ethnic cleansing"). Another working paper will be prepared in collaboration with two members of the Committee on the Elimination of Racial Discrimination and will deal with the issues involved in implementing article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination.